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SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 81 6353

HERBERT RUSSELL BASSETT,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

APPENDIX

DECEMBER 4, 1981, OPINION
OF VIRGINIA SUPREME COURT

Robert P. Geary, Esq.
GEARY & DAVENPORT
2026 East Main Street
Richmond, Virginia 23223
(804) 643-8003

Counsel for Petitioner

PRESENT: All the Justices

HERBERT RUSSELL BASSETT

Record No. 810301

-v- Record No. 810301 OPINION BY JUSTICE W. CARRINGTON THOMPSON
December 4, 1981

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF HENRICO COUNTY
Robert M. Wallace, Judge

On August 22, 1980, a jury convicted Herbert Russell Bassett of murder during the commission of a robbery while armed with a deadly weapon, Code § 18.2-31(d), and of the use of a firearm in the commission of murder, Code § 18.2-53.1. The jury recommended a sentence of death. After considering a presentence report, on November 19, 1980, the trial court confirmed the jury's verdict and ordered that Bassett be executed. Code § 17-110.1(A) requires that we review the death sentence, and we have consolidated this review with Bassett's appeal of his capital murder conviction, Code § 17-110.1(F), and given them priority on our docket as mandated by Code § 17-110.2.

On the morning of November 24, 1979, a passerby discovered Albert Lee Burwell, Jr.'s naked body lying face down in a ditch along a road in eastern Henrico County. Burwell's father told the police that his sixteen-year-old son was the attendant at the Mascot Gas Station on Fairmont Avenue in Richmond. He last saw his son at the station on Friday, November 23, at approximately 5:00 p.m. According to the station's bookkeeper, Burwell's absence was noted between 10:30 p.m. and 11:00 p.m. on November 23. An inventory of Burwell's gas pump revealed a $212.00 shortage.

The forensic pathologist who performed the autopsy of Burwell found six gunshot wounds in the back, arm, and lip. Four of the six wounds revealed gun powder, indicating that the gun was fired within inches of Burwell. The pathologist stated that the two gunshot wounds of the back "had the capability for being fatal within a short interval" and "death from bleeding occurred within ten to thirty minutes."

In December, 1979, during a drug raid on Laverne Thornton's house, the Richmond police seized a .22 caliber revolver. A ballistics expert received the gun for examination and found that it had fired the shots which killed Burwell. Thornton told the police that her daughter, Belinda Atkinson, had given her the gun for protection. Atkinson stated that she had purchased the revolver for $75 from Betty Jean Winfield and that the purchase was made in the presence of Tyrone Jackson and Jeannette Green. The police arrested Jackson in December, 1979, and Winfield on January 8, 1980. A statement made by Winfield at the time of her arrest prompted Bassett's arrest the same day.

At trial, Winfield testified that when the Virginia Correctional Center for Women released her on November 20, 1979, she met Jackson, Bassett, and another man in Petersburg and that all four went to Richmond. Winfield stated that on Friday, November 23, 1979, Samuel Walker "Dap" Cook, Jr., and Jeannette Green sought her aid in buying drugs and that Bassett allowed them to "shoot" the drugs in his house. Thereafter, Winfield, Green, and Sylvia Demetress Williams (now married to Bassett) drove to Ashland to pick up Bassett's paycheck, but failed to do so. Later, Winfield, Green, Cook, and Bassett left in Bassett's car to commit a robbery near Bassett's place of employment. They abandoned this venture because of the presence of the police near the intended site.

One of the group then suggested that they rob the attendant at the Mascot Station. Winfield testified that they arrived at the station between 11:00 p.m. and midnight, and that Bassett had the two women "create a diversion" to lure Burwell behind the station where Bassett robbed him. Bassett returned to the car with Burwell at gun point, forced him to enter the car and told him to start "taking his clothes off." With Burwell in the car, Bassett, Cook, and Winfield left the station. Bassett drove for about fifteen to twenty minutes, then stopped the car and ordered Burwell to lie in the ditch. Winfield testified that Bassett ignored Burwell's plea to live and stood over Burwell and shot him

several times, leaving him to die. The parties hid the gun under a dumpster near Bassett's apartment. Winfield later met Jackson, and after telling him the details of the murder, they retrieved the gun and sold it to Belinda Atkinson.

Testimony given by Cook and Green corroborated Winfield's version of the events and happenings of November 23 and 24.

Bassett denied any knowledge of Burwell's death. He admitted that he allowed Winfield to stay in his apartment over Thanksgiving, 1979, but said that on Friday, November 23, Winfield, Cook, and Green left the house together and did not return that night. Bassett testified that he spent the entire evening with his wife, children, and parents. He said that he found Winfield asleep in the house the next morning. Bassett's wife, mother, mother-in-law, and niece corroborated Bassett's alibi.

In the punishment phase of Bassett's trial, the Commonwealth established that Bassett's record revealed a 1963 conviction for unlawful wounding, with a 12-month sentence; a 1965 statutory burglary conviction, with a nine-month sentence; a 1966 conviction as an accessory after the fact in a breaking-and-entering, with a 12-month sentence; a 1966 escape conviction, with a six-month sentence; and a 1967 armed robbery conviction, with a 99-year sentence. On May 25, 1979, the Parole Board released Bassett after he had served over 12 years of the armed-robbery sentence.

Bassett does not appeal his conviction of the use of a firearm in the commission of murder, but he does raise numerous questions concerning his capital murder conviction and sentence.

I. Cruel and Unusual Punishment.

We have considered and find no merit in the argument Bassett made that the death penalty is cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution or Article I, § 9 of the Virginia Constitution. See Justus v. Commonwealth, ___ Va. ___, ___ S.E.2d ___ (1981) (October 16, 1981), and cases therein cited.

II. Future Dangerousness.

Code § 19.2-264.4(C) permits the imposition of the death sentence for a capital offense after the Commonwealth proves beyond a reasonable doubt that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society. To meet its burden of proof, the Commonwealth must rely on the "prior history of the defendant" or the circumstances surrounding the commission of the offense. Bassett contends that the statute provides inadequate guidelines or standards for the fact finder to follow in making this determination.

In Smith v. Commonwealth, 219 Va. 455, 248 S.E.2d 135 (1978), we noted that the continuing-threat provision of Code § 19.2-264.4 (C) mirrored a Texas provision approved in Jurek v. Texas, 428 U.S. 262 (1976), and we found no constitutional vagueness in the statutory language:

> In our view, [the statute] is designed to focus the fact finder's attention on prior criminal conduct as the principal predicate for a prediction of future "dangerousness". If the defendant has been previously convicted of "criminal acts of violence", i.e., serious crimes against the person committed by intentional acts of unprovoked violence, there is a reasonable "probability", i.e., a likelihood substantially greater than a mere possibility, that he would commit similar crimes in the future. Such a probability fairly supports the conclusion that society would be faced with a "continuing serious threat". [Footnote omitted.]

219 Va. at 478, 248 S.E.2d at 149. The provision has a commonsense meaning which a jury can understand and thus supplies a sufficient standard for a jury to predict future criminal conduct. Jurek, 428 U.S. at 275, 278-79.

The fact finder looking at Bassett's criminal record could determine that his past actions establish a clear pattern of criminal conduct. The record reveals a predisposition to commit another crime upon release from custody. For example, Bassett had served 12 years of a 99-year sentence for armed robbery when he was paroled. Within six months of his release, Bassett had planned and committed the crimes involved in the instant case. The statute is not vague, and the jury reasonably could find that Bassett poses a continuing serious threat to society.

III. Change of Venue.

Bassett's first trial in June, 1980, ended in a mistrial when the jury could not agree on a verdict. The second trial commenced August 19, 1980, and Bassett claims that excessive publicity prevented a fair trial.

The presumption is that the accused can get a fair trial in the locality where the offense occurred. Hampton v. Commonwealth, 190 Va. 531, 58 S.E.2d 288 (1950). The accused has the burden of overcoming this presumption by clearly showing that a prevailing prejudice against him denies him a fair and impartial trial. Newcomer v. Commonwealth, 220 Va. 64, 255 S.E.2d 485 (1979); Farrow v. Commonwealth, 197 Va. 353, 355, 89 S.E.2d 312, 313 (1955). In Farrow, the defendant presented one affidavit, a local newspaper editorial, and two newspaper articles which were not prejudicial to the defendant or his victim. We held that the defendant failed to offer sufficient evidence to support a motion for a change of venue. In the instant case, the record reveals only a few non-prejudicial newspaper clippings. The voir dire examination indicated that only a very few of the potential jurors had knowledge of the offense and no juror stated he or she would be influenced by what had been seen or heard. The trial court properly overruled the motion for a change of venue.

IV. Prior Criminal Records of Prosecution Witnesses.

The Commonwealth presented three key witnesses, Betty Winfield, Jeannette Green, and Samuel Walker "Dap" Cook, Jr. Each had been convicted of crimes. Bassett sought in a pretrial discovery motion before his first trial to obtain records of those convictions. He argued that the trial court's refusal prevented him from effectively impeaching the witnesses' testimony and contributed to his erroneous conviction. He seeks a special procedural rule permitting pretrial discovery of accomplices' criminal records.

There is no merit in this assignment of error because during the first trial the court ordered the Commonwealth's Attorney to

provide the records. Bassett had them before his second trial in August.

V. Limitation on Voir Dire Questions.

Bassett tendered 27 voir dire questions to the court. Eleven of these were propounded by the court to the members of the panel, and sixteen were not. Bassett complains that this refusal prevented him from determining whether the potential jurors stood indifferent in the ca and denied him an impartial jury.

Bassett had no absolute right to have the court ask every question he propounded. The statute governing at that time, Code § 8.01-358[1], provided:

> The court and counsel for either party may examine under oath any person who is called as a juror therein and may ask such person or juror directly any relevant question to ascertain whether he is related to either party, or has any interest in the case, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein.

Further questions lie within the court's sound discretion. Davis v. Sykes, 202 Va. 952, 121 S.E.2d 513 (1961). We have carefully reviewed the questions refused and conclude that Bassett was not prejudiced thereby. He has not shown that the trial court abused its discretion in refusing to ask the remaining questions. In the absence of such a showing, we will not disturb the court's ruling. Turner v. Commonwealth, 221 Va. 513, 522, 273 S.E.2d 36, 41-42 (1980).

VI. Witness's Right to Confer with his Counsel During Cross-examination.

Bassett complains that his Sixth Amendment right of confrontation was violated when the trial court permitted Samuel Cook, a Commonwealth's witness also indicted for Burwell's murder, to confer privately with his attorney during cross-examination. Cook's trial had been continued to a date subsequent to Bassett's, and counsel for Bassett sought to impeach Cook's testimony by showing that Cook realized that implicating Bassett would benefit Cook during Cook's own trial. Cook stated that he did not know

[1] The General Assembly amended Code § 8.01-358 after Bassett's trial, substituting "shall have the right to examine" for "may examine" and "shall have the right to ask" for "may ask." Acts 1981, c. 200.

why his case had been continued, but only that his attorney had thought the continuance would be best. The court gave Cook permission to leave the witness stand to confer privately with his attorney. When Cook returned to the stand, his counsel explained to the court that he had advised Cook of his right to refuse to answer certain questions. Cook wished to testify and replied affirmatively when counsel for Bassett asked before the jury whether Cook's attorney had told him a continuance of his case was best. We see no possible injury to Bassett in this procedure and reject this assignment of error.

VII. Chain of Possession.

Richmond Vice Detective Robinson, having seized the murder weapon in early December during a drug raid, gave it to Detective James Gaudet on December 10, 1979. Gaudet immediately delivered it to a forensic laboratory for examination. Detective Robinson died in April, 1980. Bassett contends that Robinson's death broke the chain of possession and that the court should not have admitted the gun in evidence. At trial the gun was identified by its serial number, and such an item possesses characteristics which are fairly unique, readily identifiable, and relatively impervious to change. In Smith v. Commonwealth, 219 Va. 554, 559, 248 S.E.2d 805, 808 (1978), we stated this rule: "All that is necessary to establish a chain of custody of exhibits is that the evidence afford reasonable assurance that the exhibits at trial are the same and in the same condition as they were when first obtained." The admission of the gun (Exhibit 6) in this case came within the rule.

VII. Alleged Misnomer of Deceased.

Bassett contends that the indictment was fatally defective because it described the deceased as Albert Lee Burwell instead of Albert Lee Burwell, Jr. Misnomer of a victim is not fatal when the victim's identity is made clear at trial. Brown v. Commonwealth, 138 Va. 807, 122 S.E. 421 (1924). Further, in O'Bannon

v. Saunders, 65 Va. (24 Gratt) 138 (1873), we held that "Jr." is not part of a person's name, but is mere descriptio personæ and may be rejected as surplusage.

IX. Estoppel.

Robinetta Wall, a Commonwealth's witness, testified that Tyrone Jackson had admitted to her that he had robbed and shot a man. Bassett contends that the Commonwealth is bound by her unimpeached testimony and estopped from convicting him because her statement shows "another person killed the victim." This assignment of error is without merit. The Commonwealth vouched for Wall's credibility, but was not bound by her testimony. Hall v. Commonwealth, 178 Va. 22, 26, 16 S.E.2d 304, 305 (1941). Further, Wall testified that she did not believe the statement made by Jackson and thought he was "jiving" her.

X. Sufficiency of the Evidence.

Bassett contends that the evidence is insufficient to show that he committed murder in the perpetration of a robbery. He argues that the robbery occurred at a Richmond gas station, but the murder happened off Bickerstaff Road in Henrico County some 15 or 20 minutes later. He characterizes this interval separating the two events as "an enormous period of time" and argues that they were not "closely related" in "time, place and causal connection."

A similar argument was advanced in Linwood Earl Briley v. Commonwealth, 221 Va. 532, 273 S.E.2d 48 (1980). The defendant robbed the victim of his car outside a southside Richmond restaurant and murdered him 15 to 20 minutes later on Mayo Island in the James River. We said:

> In a robbery prosecution, where the violence against the victim and the trespass to his property combine in a continuing, unbroken sequence of events, the robbery itself continues as well for the same period of time.
>
> . . . [W]e hold that the killing involved here was, so closely related in time, place and causal connection to make the killing, as a matter of law, a part of the same criminal enterprise.

221 Va. at 543-44, 273 S.E.2d at 55-56. We reject Barsett's contention on the same rationale.

XI. Objection to Improper Argument.

Bassett and his wife, Demetress, testified that they spent part of the night on November 23 looking for Mike Wade. Wade allegedly had damaged Demetress' mother's car and had promised to repair the vehicle. Bassett failed to call Mike Wade at trial as a corroborating witness. In the closing argument, the Commonwealth's Attorney stated ambiguously "Who's Mike? Did you see Mike? Did you? I didn't. I didn't see Mike." When the prosecutor concluded his argument, the defense counsel objected, arguing that the prosecutor was testifying, thus improperly trying to discredit the alibi witness's testimony. The defense attorney, in his closing argument, admitted that the prosecutor must have meant that he did not see Mike Wade take the stand. However, defense counsel argued that the prosecutor could have called Wade in rebuttal, but did not, and that his argument had the effect of improperly impeaching Demetress. We reject this argument. The trial court determined that the prosecutor's remarks were not an attempt to discredit the witness's testimony, but rather were a proper comment upon the failure of defense counsel to call a potential corroborating alibi witness.

XII. Alibi Instruction.

Bassett complains of the alibi instruction that was given, arguing that it confused the jury as to the standard of proof required to establish an alibi.[2] We disagree. The instruction requires the jury to acquit the defendant if from all the evidence it has a reasonable doubt about his presence at the scene of the alleged crime. An instruction on the standard of proof in an

[2] Instruction 2 reads:

> The defendant relies upon the defense that he was not present at the time and place the alleged offense was committed. If, after consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time and place the alleged offense was committed, you shall find him not guilty.

alibi defense is unnecessary when the court instructs the jury, as the court did in this case, on the presumption of innocence and reasonable doubt. Crabbe v. Commonwealth, 221 Va. 419, 270 S.E.2d 727 (1980). A jury objectively reading the instruction complained of could not be misled, because nowhere does it require proof of alibi beyond a reasonable doubt or even by a preponderance of the evidence.

XIII. Reasonable Doubt Instruction.

Bassett complains that the court gave no instruction on reasonable doubt at the trial's sentencing phase. The record shows that in making this contention Bassett is in error.[3] Bassett also complains that the trial court failed to redefine reasonable doubt during the penalty phase of his trial. The court defined reasonable doubt in the guilt phase as "a doubt based on [the jurors'] sound judgment after a full and impartial consideration of all the evidence in the case." The court committed no reversible error in refusing to redefine the term in the penalty phase.

XIV. Right of Self-representation.

At the conclusion of all the evidence at the trial's sentencing phase, one of Bassett's counsel stated to the trial court that over their objection Bassett wished to address the jury. The court overruled the request, pointing out that, when the case started, the court had been advised that two attorneys would represent the defendant and that at no time prior thereto had Bassett requested permission to conduct his own defense. Bassett claims that this ruling violated his right of self-representation guaranteed in Faretta v. California, 422 U.S. 806 (1975). A defendant must assert the right to dismiss his counsel and conduct his own defense before meaningful trial proceedings have commenced. Once the trial begins, the exercise of that right lies within the trial

[3] Instruction A reads in pertinent part:

> You have convicted the defendant of capital murder . . . . . You must decide whether the defendant shall be sentenced to death or to life imprisonment. Before the penalty of death can be imposed as punishment in this case, the Commonwealth must prove beyond a reasonable doubt either one of the following two alternatives . . . . [Emphasis added.]

court's sound discretion. United States v. Lawrence, 605 F.2d 1321 (4th Cir. 1979), cert. denied, 444 U.S. 1084 (1980), and Coleman v. State, ___ Okla. Crim. ___, 617 P.2d 243 (1980). We find no abuse of the trial court's discretion in its denial of Bassett's motion.

XV. Evidence of Prior Convictions.

During the penalty phase of the trial, the court permitted the Commonwealth to introduce Bassett's prior convictions, the sentences imposed, and portions of the official transcript from Bassett's 1967 armed robbery trial. Code § 19.2-164.4 provides "[e]vidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense."

Bassett admits that in Stamper v. Commonwealth, 220 Va. 260, 277, 257 S.E.2d 808, 820 (1979), we approved admitting evidence of prior convictions, but he urges excluding the sentences imposed. We reject his contention. The sentence reflects the gravity of the offense and the offender's propensity for violence.

Bassett further objects to admission of the trial transcript in evidence. The record indicates that the victim in Bassett's 1967 robbery trial had since died, and the transcript provided the best method of bringing the evidence before the jury. In Stamper, we approved the use of a prior victim's live testimony in the trial's penalty phase. 220 Va. at 275, 257 S.E.2d at 819. We find the use of the transcript here unobjectionable. Shifflett v. Commonwealth, 218 Va. 25, 235 S.E.2d 316 (1977); Fisher v. Commonwealth, 217 Va. 808, 232 S.E.2d 798 (1977).

XVI. Allocution.

Bassett contends that his statutory right of allocution entitles him as a matter of law to address the jury prior to the determination of his sentence. He misconceives the function of

allocution.[4] Allocution is the defendant's right to speak on his own behalf after the fact finder determines guilt but before the judge pronounces sentence. The defendant's closing argument is not allocution, but is his opportunity to present arguments in mitigation before the fact finder deliberates. Furthermore, the record and the final order show that the court permitted Bassett to address it at length.

Bassett further claims that the revised death penalty statute is unconstitutional because it discriminates between capital defendants tried by a jury and those tried by the court. In capital trials before judges, Code § 19.2-298 permits the defendant to plead for mitigation before the judge determines punishment. In a jury trial, unlike a bench trial, Code § 19.2-264.5 defers allocution until the jury has deliberated and decided the sentence. Bassett's argument ignores Code § 19.2-264.4(B)[5]. This statute permits the defendant to present evidence in mitigation during the trial's sentencing stage. The defendant, through his attorney, addresses the fact finder in the closing arguments. Finally, the defendant has the right to allocution before the judge pronounces sentence in both bench and jury trials.

At the penalty phase, Bassett called witnesses and testified himself. In the guilt phase, he testified and was cross-examined.

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[4] Code § 19.2-298. Pronouncement of sentence.-- . . . . Before pronouncing the sentence, the court shall inquire of the accused if he desires to make a statement and if he desires to advance any reason why judgment should not be pronounced against him.

[5] Code § 19.2-264.4(B) reads:

> In cases of trial by jury, evidence may be presented as to any matter which the court deems relevant to sentence, except that reports under the provisions of § 19.2-299, or under any Rule of Court, shall not be admitted into evidence.
>
> Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following:(i) The defendant has no significant history of prior criminal activity, or (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance or (iii) the victim was a participant in the defendant's conduct or consented to the act, or (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired; or (v) the age of the defendant at the time of the commission of the capital offense.

The record reveals that he received every opportunity to show all the relevant factors in mitigation.

XVII. Failure of the Trial Court to Modify Death Penalty.

Code § 19.2-264.5 provides in capital cases that "[a]fter consideration of the [presentence] report, and upon good cause shown, the court may set aside the sentence of death and impose a sentence of imprisonment for life." (Emphasis added.) In non-capital cases, this qualifying language is not present. Bassett contends that in non-capital cases a trial court has an unlimited discretion in reducing or altering the penalty. He complains that Code § 19.2-264.5 unconstitutionally discriminates against him because its "good cause" provision imposes upon him a heavier burden in reducing a capital verdict than in reducing a non-capital verdict.

We do not accept this argument. No jury verdict is subject to the trial judge's unlimited discretion. The phrase "upon good cause shown" merely reiterates the rule applicable in all cases, misdemeanor, felony, or capital, when the court must consider altering a jury verdict. The same criterion applies in capital as well as non-capital cases.

Bassett argues further that the trial court improperly exercised its discretion in refusing to reduce his sentence to life imprisonment. We disagree. The trial judge had heard the evidence twice and was thoroughly familiar with the facts. His remarks at sentencing show that he recognized the aggravating factors and looked for mitigating factors, but found none. We affirm his action as a proper exercise of discretion.

XVIII. Appropriateness of Penalty.

Bassett argues that his jury must have been impassioned or prejudiced to return the death sentence. He points out the first trial of this case resulted in a mistrial because the jury could not agree on a verdict. Further, he asserts that the only time a Henrico County jury has ever imposed this sentence is for mul-

tiple murders. He says that to apply this penalty in a single murder case shows that passion or prejudice influenced the jury's decision. We disagree. The record reveals no indication that passion, prejudice, or any other arbitrary factor affected the jury's determination.

Bassett also alleges that his death penalty is excessive or disproportionate to penalties imposed in similar death penalty cases recently before this court.[6] We find no support for his contention. Considering both the crime and the defendant, we are of opinion that Bassett's murder of Burwell equals the atrocity found in the cases cited by Bassett.

Finding no reversible error in the court below, we will affirm the verdict of guilty and the sentence of death.

Affirmed.

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[6] James Dyral Briley v. Commonwealth, 221 Va. 563, 273 S.E.2d 57 (1980) (defendant and three others robbed, then shot husband, wife, and their five-year-old son in the head as they lay bound, gagged, and covered with sheets).

Linwood Earl Briley v. Commonwealth, 221 Va. 532, 273 S.E.2d 48 (1980) (Defendant and three others robbed and shot the victim, leaving his body partially submerged in the James River).

Turner v. Commonwealth, 221 Va. 513, 273 S.E.2d 36 (1980) (defendant robbed a jewelry store and shot the owner once in the head and twice in the chest for setting off the silent alarm).

Clark v. Commonwealth, 220 Va. 201, 257 S.E.2d 784 (1979), cert. denied, 444 U.S. 1049 (1980) (defendant, an assassin, shot victim at point blank range, then departed with victim's money).

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA

v.

HERBERT RUSSELL BASSETT

O R D E R - Case No. 80F99

By Order of December 4, 1981, the Supreme Court of Virginia affirmed the conviction in this case by this Court on November 19, 1980, and this Court having received on December 16, 1981, a pro se "Request For Appointment of Counsel", to "...perfect a Writ of Certoari before the Supreme Court of the United States," and "Notice Of Appeal" to "...the Supreme Court of the United States in the form of a Writ of Certoari.", it is ORDERED that the "Request For Appointment Of Counsel" and "Notice Of Appeal" are hereby made a part of the record.

Upon mature consideration of the "Request For Appointment Of Counsel", and upon consideration that no reasons were set forth by the defendant for his request, it is further ORDERED that the said Request is denied, Robert P. Geary, Esquire, heretofore appointed to represent the defendant being a competent and able attorney practicing before the Bar of this Court shall remain attorney of record for the defendant and shall represent him in all future matters pertaining to the above, and upon further consideration of the "Notice Of Appeal", and the Order of the Supreme Court of Virginia of December 4, 1981, it is further ORDERED that January 4, 1982, at 3:00 o'clock p.m., be set aside on the Court docket for Robert P. Geary, Esquire, to present any motions he deems appropriate and/or for this Court to set a date to impose sentence in the above case carrying into effect the Order of the Supreme Court of Virginia affirming said judgment.

The defendant's presence not being required on January 4, 1982, his appearance is not Ordered. If counsel for the defendant desires the presence of the defendant, his presence will be arranged on appropriate request and submission of an order.

The Clerk is directed to forward a certified copy of this Order to the defendant; to the Attorney for the Commonwealth and to Robert P. Geary, Esquire, to whom shall also be forwarded photocopies of the pro se "Request For Appointment Of Counsel", "Notice Of Appeal" and accompanying Affidavits of in forma pauperis.

ENTER: 12 / 17 / 81

Judge

A Copy Teste:
Margaret B. Baker, Clerk

Deputy Clerk

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO
RICHMOND, VIRGINIA

Herbert Russell Bassette ---------- Plaintiff
Mecklenburg Correctional Center
P. O. Box 500
Boydton, Virginia 23917

-VS-

Commonwealth of Virginia ---------- Respondent

RE: Commonwealth of Virginia
V.
Herbert Russell Bassette
Indictment Number 80F99

TO: Robert M. Wallace, Judge of the above entitled Court:

NOTICE OF APPEAL

Notice is hereby given that, Herbert Russell Bassette, Plaintiff above mentioned Appeals the decision of the Supreme Court of Virginia, case number 810301, desided on the 4th day of December, 1981, to the Supreme Court of the United States in the form of a WRIT OF CERTIORARI. Sentence was imposed by the Circuit Court of Henrico County on November 20, 1980 in the case Commonwealth of Virginia V. Herbert Russell Bassette Indictment 80F99 Charging Capitol Murder.

Respectfully Submitted,

By Herbert Russell Bassette
PLAINTIFF

Date 12/14/81

State of Virginia
County of Mecklenburg

Subscribed and sworn to before me
on this 14th day of December,
1981.

Frances C. Smith
NOTARY PUBLIC

My commission expires _____.

Page 1 of 2. IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO
RICHMOND, VIRGINIA

AFFIDAVIT OF FORMA PAUPERIS

Herbert Russell Bassette ---------- Plaintiff

State of Virginia
County of Mecklenburg

The plaintiff being fully sworn says:

1. He is unable to pay the cost of this action and give securities thereof.

2. His assets amount to a total of $ 1.00 .

Herbert Russell Bassette
Signature of Plaintiff

State of Virginia
County of Mecklenburg

Subscribed and sworn to before me on this 14th day of December, 1981, a Notary Public in and for the County of Mecklenburg.

Notary Public

My commission expires Nov. 1 1985.

CERTIFICATION

This is to certify that I was notified on December 9, 1981 of the Supreme Court of Virginias decision by Robert P. Geary Court-Appointed Attorney, by United States mail, at the Mecklenburg Correctional Center, at Boydton, Virginia. That on the 14th day of December, 1981, Plaintiff served Notice of Appeal, to the Circuit Court of the County of Henrico by plesin the same in the mail at the Mecklenburg Correctional Center at Boydton, Virginia address to P. O. Box 27032 Richmond, Virginia 23273 on this 14 day of December, 1981.

By Herbert Russell Bassette
Plaintiff

State of Virginia
County of Mecklenburg

Subscribe and sworn to before me on this 14th day of December, 1981.

NOTARY PUBLIC

My commission expires Nov. 1, 1985.

IN THE CIRCUIT COURT OF HENRICO COUNTY
RICHMOND , VIRGINIA

Herbert Russell Bassette---------- Plaintiff
Mecklenburg Correctional Center
P. O. Box 500
Boydton, Virginia

-vs-

Commonwealth of Virginia---------- Respondent

Re: Commonwealth of Virginia
V.
Herbert Russell Bassette

Indictment Number 80F99

TO: Robert M. Wallace, Judge, of The above entitled Court:

REQUEST FOR APPOINTMENT OF COUNSEL

Comes now the plaintiff, Herbert Russell Bassette, who request this Court to Appoint Counsel to perfect a Writ of Certoari before the Supreme Court of the United States, a decision was rendered by the Supreme Court of Virginia on December 4, 1981, from a conviction obtained from the Henrico Circuit Court of November 20, 1980 , Indictment 80F99 , the plaintiff request this court to;

1. Appoint Counsel to prepare and perfect a Writ of Certoari before the Supreme Court of the United States, who is qualified and capable.
2. Appoint Counsel to represent the Writ of Certoari before the Supreme Court of the United States.
3. Delay setting a date of execution until a decision can be reached on the merits of the Writ of Certoari before the Supreme Court of the United States.

Respectfully Submitted,
By Herbert Russell Bassette
Plaintiff

Page two

AFFIDAVIT FOR FORMA PAUPERIS

State of Virginia
County of Mecklenburg

The plaintiff being duly sworn states:

1. He is unable to pay the costs of this request or give securities thereof.

2. His assets amount to a total of $ 1.00 .

By Herbert Russell Saunders
Signature of Plaintiff

State of Virginia
County of Mecklenburg

Subscribed and sworn to before me a Notary Public of Mecklenburg County, Virginia on this 14th day of December, 1981.

Clarence E. Smith
NOTARY PUBLIC

My commission expires Nov. 6, 1985.

Certification

This is to certify that REQUEST FOR APPOINTMENT OF COUNSEL, was mailed by regular United States Mail at the Mecklenburg Correctional Center, Boydton, Virginia on the 14th day of December, 1981, to Robert M. Wallace, Judge, Circuit Court of Henrico County, Virginia on the 14th day of December, 1981 at P. O. Box 27032, Richmond, Virginia 23273

By Herbert Russell Saunders
Plaintiff

State of Virginia
County of Mecklenburg

Subscribed and sworn to before me a Notary Public on this 14th day of December, 1981.

Clarence E. Smith
NOTARY PUBLIC

My commission expires Nov. 6, 1985.

AFFIX SEAL